IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE M.H.S. ANSARI

and
THE HON'BLE MR JUSTICE T.Ch.SURYA RAO

WRIT PETITION NOs : 19184, 19185 and 19196 of 2004

Writ Petition No.19184 of 2004:

Between:

M/s. Sri Shirdi Sai Enterprises,

D.No.12-3-32, Peena Mohammed Street,
Tarapet, Vijayawada, rep.by its partner Sri A.Jayakrishna.

..... PETITIONER

AND

1 Commercial Tax officer, Convent Street, Vijayawada.
2 Regional Vigilance and Enforcement Wing, Vijayawada.
3 Deputy Commissioner (CT), No.I Division, Vijayawada.

..... RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ or order or direction particularly one in the nature of writ of Mandamus declaring that all chemicals, other than those specified elsewhere, fall within the purview of Entry 9 of the sixth schedule and accordingly hold that all such chemicals are taxable at 8% under Item 9 of schedule of the APGST Act read with G.O.Ms.No.910 Rev, dated
31-12-1999 and accordingly direct the third respondent to levy sales tax on the sale of calcium carbide and other chemicals to tax only at 8% under the aforesaid basis.

WRIT PETITION NO : 19185 of 2004

Between:

M/s. Sri Shirdi Sai Enterprises,

D.No.12-3-32, Peena Mohammaed Street,
Tarapet, Vijayawada, represented by its Partner Sri A. Jayakrishna

..... PETITIONER

AND

1 Commercial Tax Officer convent Street,
Vijayawada.
2 Regional Vigilance and Enforcement Wing, Vijayawada.
3 Deputy Commissioner (CT) No.I Divisiona,
Vijayawada.

..... RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ or order or direction particularly one in the nature of writ of Mandamus declaring that all chemicals, other than those specified elsewhere, fall within the purview of Entry 9 of the Sixth Schedule and accordingly hold that all such chemicals are taxable at 8% under Item 9 of Schedule of the APGST Act read with G.O.Ms.No.910 Rev, dated 31/12/1999 and accordingly direct the third respondents to levy sales tax on the sale of calcium carbide and other chemicals to tax only at 8% under the aforesaid basis.

WRIT PETITION NO : 19196 of 2004

Between:

M/s. Sri Shirdi Sai Enterprises,

D.No. 12-3-32, Peena Mohammed Street, Tarapet,
Vijayawada, rep. by its Partner Sri A. Jayakrishna.

..... PETITIONER

AND

1 Commercial Tax Officer, Convent Street, Vijayawada.
2 Regional Vigilance and Enforcement Wing, Vijayawada.
3 Deputy Commissioner (CT), No.I Division, Vijayawada.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ or order or direction particularly one in the nature of Writ of Mandamus declaring that all chemicals, other than those specified elsewhere, fall within the

purview of Entry 9 of the Sixth Schedule and accordingly hold that all such chemicals are taxable at 8% under Item 9 of Schedule of the APGST Act read with G.O.Ms.No.910 Rev, dated 31-12-1999 and accordingly direct the third respondent to levy sales tax on the sale of calcium carbide and other chemicals to tax only at 8% under the aforesaid basis.

Counsel for the Petitioner: MR.S.KRISHNA MURTHY

(in all writ petitions)

Counsel for the Respondents: G.P. FOR COMMERCIAL TAX

(in all writ petitions)

The Court made the following

COMMON ORDER **(per the Hon'ble Sri Justice M.H.S. Ansari)**:

The above three matters raise identical questions and are being disposed of by this common order.

The petitioner in all the writ petitions, seeks a direction that the product Calcium Carbide is liable to tax at the rate of 8%. When the writ petitions were filed questioning the show cause notices, interim directions were issued by this Court, restraining the respondents from passing orders.

The writ petitions came to be filed against the issued show cause notices directly in

this Court as according to the petitioners, the Sales Tax Appellate Tribunal in the case of ***Veeranjaneya Enterprises vs. State of Andhra Pradesh*** has held that Calcium Carbide does not fall under entry 9 of the Sixth Schedule "Dyes and Chemicals". The product Calcium Carbide though a chemical, would fall under the Seventh Schedule.

However, it is not in dispute before us that the State, in exercise of the powers conferred on it by sub-section (1) of Section 9 of the Andhra Pradesh General Sales Tax Act, 1957, has issued directions to the effect that the rate of tax on the sale of 'Calcium Carbide' in the State shall be at eight paise in the rupee, upto 30-09-2004 only, irrespective of its classification, under the said Act.

The copy of the aforesaid notification of G.O.Ms.No.1021 Revenue (CT.II), dated 13th December 2004, published in the Andhra Pradesh Gazette Part-I Extraordinary bearing No.526, dated 18th December 2004, has been placed before us. As admittedly, in the case on hand, the period is prior to
30-09-2004. It has to be held in terms of the said Gazette that the rate of tax on the sale of 'Calcium Carbide' in the State shall be at 8%.

The writ petitions are accordingly allowed in terms of the said Gazette No.526, dated 18th December, 2004. No costs.

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M.H.S. ANSARI, J

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T.Ch. SURYA RAO, J

16th February, 2005

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That Rule Nisi have been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Wednesday, the Sixteenth day of February, Two Thousand and Five.

ASSISTANT REGISTRAR

16th July, 2004.

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To

1. The Commercial Tax officer, Convent Street, Vijayawada.
2 The Regional Vigilance and Enforcement Wing, Vijayawada.
3 The Deputy Commissioner (CT), No.I Division, Vijayawada.

4. Two CCs to G.P. for Commercial Tax, High Court Buildings,

Hyderabad (OUT).

5. Two CD copies.